

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 431 be amended to read as follows:

- 1 Page 4, between lines 7 and 8, begin a new paragraph and insert:
- 2 "SECTION 1. IC 13-11-2-149.5 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2000]: **Sec. 149.5. "Outstanding national**
- 5 **resource water", for purposes of IC 13-18-3, has the meaning set**
- 6 **forth in IC 13-18-3-2(b).**
- 7 SECTION 2. IC 13-11-2-149.6 IS ADDED TO THE INDIANA
- 8 CODE AS A NEW SECTION TO READ AS FOLLOW [EFFECTIVE
- 9 JULY 1, 2000]: **Sec. 149.6. "Outstanding state resource water", for**
- 10 **purposes of IC 13-18-3, has the meaning set forth in**
- 11 **IC 13-18-3-2(c)."**
- 12 Page 4, between lines 19 and 20, begin a new paragraph and
- 13 insert:
- 14 "SECTION 3. IC 13-11-2-265.5 IS ADDED TO THE INDIANA
- 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 16 [EFFECTIVE JULY 1, 2000]: **Sec. 265.5. "Watershed", for purposes**
- 17 **of IC 13-18-3, has the meaning set forth in IC 14-8-2-310.**
- 18 SECTION 4. IC 13-18-2-3 IS ADDED TO THE INDIANA CODE
- 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 20 1, 2000]: **Sec. 3. (a) The department shall prepare a list of impaired**
- 21 **waters for the purpose of complying with federal regulations**
- 22 **implementing Section 303(d) of the federal Clean Water Act (33**
- 23 **U.S.C. 1313(d)). In determining whether a water body is impaired,**
- 24 **the department shall consider all existing and readily available**
- 25 **water quality data and related information. The department,**
- 26 **before submitting the list to the United States Environmental**
- 27 **Protection Agency, shall:**

- (1) publish the list in the Indiana Register;
- (2) make the list available for public comment for at least ninety (90) days; and
- (3) present the list to the board.

If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing withing ninety (90) days after receipt of the changes.

(b) The board shall adopt by rule the methodology to be used in identifying waters as impaired. The rule shall specify the methodology and criteria for including and removing waters from the list of impaired waters.

(c) The list of impaired waters developed by the department shall contain a priority ranking of waters that are identified as impaired and for which total maximum daily loads will be required, as well as a schedule for the development of required total maximum daily loads. The schedule must be sufficient to ensure that all required total maximum daily loads will be developed using a phased approach within fifteen (15) years of the date the list is approved by the United States Environmental Protection Agency, or by the time prescribed in federal regulations, whichever is sooner.

(d) The department shall make a reasonable and fair allocation among sources when developing total maximum daily loads. The department shall consider public input before making the allocation. At a minimum, the department shall consider:

- (1) the technological feasibility of achieving the allocation;
- (2) the cost and benefit associated with achieving the allocation; and
- (3) any pollutant loading reductions reasonably expected to be achieved as a result of other legally required actions or voluntary measures.

(e) The total maximum daily load implementation plan shall at a minimum provide for follow up monitoring of the impaired water body and any necessary revision of the total maximum daily load allocations in order to assure compliance with water quality standards. To ensure that the water quality standards are attained and maintained, the department shall review the status of the impaired water body in accordance with the monitoring plan as set forth in the total maximum daily load implementation plan.

(f) Before July 1, 2005, the department shall submit a report to the governor, the environmental quality service council, the board, the speaker of the house of representatives, and the president pro tempore of the senate detailing progress made under this section. At a minimum, the report shall evaluate the effectiveness of the program and identify any recommended statutory changes to make the program more efficient, effective, and equitable.

SECTION 5. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

1 (1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et
 2 seq.), as in effect January 1, 1988; and
 3 (2) the federal Safe Drinking Water Act (42 U.S.C. 300f through
 4 300j), as in effect January 1, 1988;
 5 except as provided in IC 14-37.

6 (b) "Outstanding national resource water" means a water
 7 designated as such by the general assembly. The designation shall
 8 describe the quality of the outstanding national resource water to
 9 serve as the benchmark of the water quality that shall be
 10 maintained and protected. Waters that may be considered for
 11 designation as outstanding national resource waters include water
 12 bodies that are recognized as:

13 (1) important because of protection through official action,
 14 such as:

15 (A) federal or state law;

16 (B) presidential or secretarial action;

17 (C) international treaty; or

18 (D) interstate compact;

19 (2) having exceptional recreational significance;

20 (3) having exceptional ecological significance;

21 (4) having other special environmental, recreational, or
 22 ecological attributes; or

23 (5) waters with respect to which designation as an
 24 outstanding national resource water is reasonably necessary
 25 for protection of other water bodies designated as
 26 outstanding national resource waters.

27 (c) "Outstanding state resource water" means a water
 28 designated as such by the board. Waters that may be considered
 29 for designation as outstanding state resource waters include water
 30 bodies that have unique or special ecological, recreational, or
 31 aesthetic significance.

32 (d) "Watershed" has the meaning set forth in IC 14-8-2-310.

33 (e) The board may designate a water body as an outstanding
 34 state resource water by rule if the board determines that the water
 35 body has a unique or special ecological, recreational, or aesthetic
 36 significance.

37 (f) Before the board may adopt a rule designating a water
 38 body as an outstanding state resource water, the board must
 39 consider the following:

40 (1) Economic impact analyses, presented by any interested
 41 party, taking into account future population and economic
 42 development growth.

43 (2) The biological criteria scores for the water body, using
 44 factors that consider fish communities, macro invertebrate
 45 communities, and chemical quality criteria using
 46 representative biological data from the water body under
 47 consideration.

48 (3) The level of current urban and agricultural development
 49 in the watershed.

50 (4) Whether the designation of the water body as an

1 outstanding state resource water will have a significant
2 adverse effect on future population, development, and
3 economic growth in the watershed, if the water body is in a
4 watershed that has more than three percent (3%) of its land
5 in urban land uses and serves a municipality with a
6 population greater than five thousand (5,000).

7 (5) Whether the designation of the water body as an
8 outstanding state resource water is necessary to protect the
9 unique or special ecological, recreational, or aesthetic
10 significance of the water body.

11 (g) The commissioner shall present a summary of the
12 comments received from the comment period and information that
13 supports a water body designation as an outstanding state resource
14 water to the environmental quality service council not later than
15 one hundred twenty (120) days after the rule regarding the
16 designation is finally adopted by the board.

17 (h) Notwithstanding any other provision of this section, the
18 designation of an outstanding state resource water in effect on
19 January 1, 2000, remains in effect.

20 (i) For a water body designated as an outstanding state
21 resource water, the board shall provide by rule procedures that
22 will result in a net improvement in water quality for the
23 outstanding state resource water while also providing for changes
24 and additions to existing permittees' pollutant loadings and
25 allowing for new permits. These procedures must include the
26 following:

27 (1) A definition of significant lowering of water quality that
28 includes a de minimis quantity of additional pollutant load
29 when a new or increased permit limit is required below
30 which antidegradation implementation procedures do not
31 apply.

32 (2) Utilization of water quality data that is less than five (5)
33 years old and specific to the outstanding state resource
34 water.

35 (3) Provisions that:

36 (A) allow for the use of voluntary water quality projects
37 undertaken in the watershed of the outstanding state
38 resource water that result in demonstrable net
39 environmental improvement in the watershed of the
40 outstanding state resource water;

41 (B) establish criteria for timely approval of projects
42 described in clause (A);

43 (C) establish a process for public input in the approval
44 process.

45 (4) A watershed improvement fee structure to remove
46 requirements for projects described in subdivision (3) upon
47 payment by the permittee of a fee commensurate with the
48 type and quantity of increased pollutant loadings not to
49 exceed five hundred thousand dollars (\$500,000) for any one
50 permit.

(5) Criteria for using the watershed improvement fees to fund watershed projects in the watershed that result in improvement in water quality.

(j) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures for the water body before it is designated.

(k) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the department and the environmental quality service council.

(l) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly."

Page 6, between lines 21 and 22 , begin a new paragraph and insert:

"SECTION 7. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "board" refers to the water pollution control board established under IC 13-18-1.

(b) All waters designated under 327 IAC 2-1.5-19(b) as outstanding state resource waters shall be maintained and protected in their present quality in accordance with 327 IAC 5-2-11.7. Any rule adopted by the board contrary to this standard is void.

(c) Except as provided in subsection (b), 327 IAC 2-1-2 and 327 IAC 2-1-6 are void to the extent that they:

(1) require that an outstanding state resource water must be maintained and protected in its present high quality without degradation; or

(2) provide that a use designation requires that a water must be maintained and protected without degradation.

(d) The board may not:

(1) require that an outstanding state resource water must be maintained and protected in its present high quality without degradation; or

(2) provide that a use designation requires that a water must be maintained and protected without degradation.

(e) Before January 1, 2001, the board shall amend 327 IAC 2-1-2 and 327 IAC 2-1-6 to reflect subsection (c).

(f) This SECTION expires on the earlier of:

(1) the effective date of the rule amendments adopted by the board under subsection (e); or

(2) January 1, 2001.

SECTION 7. [EFFECTIVE UPON PASSAGE] (a) Before January 1, 2001, the water pollution control board shall amend 327 IAC 2-1-2, 327 IAC 2-1-6(i), and 327 IAC 2-1.5-4 to reflect SECTION 3 of this act.

(b) This SECTION expires on the earlier of the following:

(1) The effective date of the rule amendment adopted under subsection (a).

(2) January 1, 2001.

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "department" refers to the department of environmental management.

(b) Before July 1, 2001, the department shall develop and maintain a quality assurance program plan and information management system to assess the validity and reliability of the data used in the implementation of IC 13-18-2-3, as added by this act, and IC 13-18-3-2, as amended by this act.

(c) The department:

(1) shall make data from the information management system under subsection (b) available to the public upon request; and

(2) may charge a reasonable fee to persons requesting the data.

(d) The department shall use the data from the information management system under subsection (b) to review the data as of January 1, 2002, supporting:

(1) the listing of impaired waters under IC 13-18-2-3, as added by this act; and

(2) the special designation of waters under IC 13-18-3-2, as amended by this act.

(e) Before September 1, 2000, the department shall appoint a water quality task force to assess the physical, chemical, and biological data collected and used by the department. The water quality task force is a subcommittee of, and shall report to, the department. The department shall study the issues associated with the implementation of IC 13-18-3-2, including:

(1) surface water assessment methodologies;

(2) program resource needs; and

(3) policy options and rule development recommendations.

(f) The water quality task force appointed under subsection (f) shall include four (4) members of the general assembly, the chairperson of the environmental quality service council, and representatives of the following:

(1) The academic community in the disciplines of biology, chemistry, and hydrology.

(2) The department.

(3) The department of natural resources.

(4) The United States Geological Survey.

(5) Private chemical water testing laboratories.

(6) Industry.

- (7) Agriculture.
- (8) Environmental advocacy organizations.
- (9) General citizens.
- (10) Municipalities.
- (11) The water pollution control board.
- (12) Local public health officials.
- (13) The state department of health.
- (g) This SECTION expires October 1, 2002.

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) Until October 1, 2002, the following apply to a water body designated before October 1, 2002, as an exceptional use water:

- (1) The water body is subject to the net water quality improvement provisions of IC 13-18-3-2(i), as added by this act.
- (2) The water body is not subject to a standard of having its water quality maintained and protected without degradation.

(b) Before October 1, 2002, the water pollution control board established under IC 13-18-1 shall:

- (1) determine whether, effective October 1, 2002, to designate as an outstanding state water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and
- (2) complete rulemaking to make any designation determined under subdivision (1).

(c) This SECTION expires January 1, 2003.

SECTION 10. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "board" refers to the water pollution control board established under IC 13-18-1.

(b) Before October 1, 2003, the board shall establish policies and rules to govern the implementation of total maximum daily load requirements of Section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d).

(c) Before July 1, 2000, the chairperson of the environmental quality service council shall appoint a working group of stakeholders with respect to the implementation of maximum daily load requirements as described in subsection (b). The working group shall consider and make recommendations to the department of environmental management and the board on identification of issues, the development of policy options, policy adoption, and rulemaking. The working group shall include representatives from:

- (1) the general public;
- (2) municipalities;
- (3) industry;
- (4) business;
- (5) agriculture;
- (6) environmental advocacy groups; and
- (7) others with a high level of expertise in the subject area to be considered by the working group.

(d) The working group appointed under subsection (c) shall

- 1 **also include the following members, all appointed by the**
2 **chairperson of the environmental quality service council:**
3 **(1) a representative of the environmental quality service**
4 **council;**
5 **(2) a technical secretary; and**
6 **(3) a member of the board.**
7 **(e) This SECTION expires October 1, 2003."**
8 Renumber all SECTIONS consecutively.
 (Reference is to ESB 431 as printed February 17, 2000.)

Representative LUTZ J